UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION DOCKET NO. 3:12-cr-00030-FDW

ORDER

THIS MATTER is before the Court *sua sponte* following review of the pleadings on Defendant's Motion for Compassionate Release/Reduction of Sentence. The Court previously directed the Government to respond to Defendant's motion and inform the Court on Defendant's vaccination status. (Doc. No. 77). The Government's response *only* provided information on Defendant's vaccination status. (Doc. No. 78). While it is well-recognized that vaccination status can greatly diminish a person's risk of serious infection from COVID-19, even in light of other medical conditions, see, e.g., Miller v. United States, No. 7:19-CR-179-D-1, 2022 WL 1131622, at *4 (E.D.N.C. Apr. 15, 2022) (collecting cases), the Fourth Circuit Court of Appeals has yet to conclude vaccination status is dispositive on the issue of extraordinary and compelling circumstances. United States v. Petway, No. 21-6488, 2022 WL 168577, at *2 (4th Cir. Jan. 19, 2022) ("With respect to the government's request on appeal that we should sustain the district court's judgment by adopting a per se rule that would always preclude a finding of extraordinary and compelling reasons when the movant has been vaccinated, we decline to resolve that issue.").

Accordingly, the Court hereby DIRECTS the Government to supplement its response with any arguments and/or concessions on the merits of Defendant's motion, including arguments and/or concessions on the 18 USCA § 3553(a) factors, no later than fourteen (14) days from the date of this Order. Defendant shall have up to twenty-one (21) days after service of the Government's supplemental response to submit a supplemental brief containing any final arguments or evidence in support of his motion.

IT IS SO ORDERED.

Signed: May 10, 2022

Frank D. Whitney

United States District Judge